

Neifeld Docket No: EDWA0019U-USX

Application/Patent No: 08/420,503

USPTO CONFIRMATION NO: 5191

File/Issue Date: 4/12/1995

Inventor/title: Quinn/THERMODILUTION CATHETER HAVING A SAFE, FLEXIBLE HEATING ELEMENT

Examiner/ArtUnit: Nasser/3735

**37 CFR 1.7(c) FILING RECEIPT AND TRANSMITTAL LETTER WITH
AUTHORIZATION TO CHARGE DEPOSIT ACCOUNT**

1. **THE COMMISSIONER IS HEREBY AUTHORIZED TO CHARGE ANY FEES WHICH MAY BE REQUIRED, OR CREDIT ANY OVERPAYMENT, TO DEPOSIT ACCOUNT NUMBER 50-2106.**

2. **FEES PAID HERewith BY EFS CREDIT CARD SUBMISSION: \$1630**

Fee for Petition to Revive Due to Unintentional Abandonment \$1500

Fee for filing a terminal disclaimer \$130

3. **THE FOLLOWING DOCUMENTS ARE SUBMITTED HERewith:**

37 CFR 1.137 Petition to Revive Due to Unintentional Abandonment (5 Pages)

Response to Notice to File Corrected Drawings Contained in Notice of Allowability

Mailed 12/22/2006 (1 page)

37 CFR 1.321 TERMINAL DISCLAIMER OVER AN APPLICATION BY ASSIGNEE
(2 pages)

Replacement Sheets (4 pages)

4. **FOR INTERNAL NEIFELD IP LAW, PC USE ONLY**

USPTO CHARGES: \$1630 CLIENT BILLING MATTER: AAAA0002 BANK ACCOUNT/Check: 6/147 G/L ACCOUNT: 5010	FIRM CHARGES: DESCRIPTION: FIRM CHARGE FOR LAWYER:
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INITIALS OF PERSON WHO **ENTERED** ACCOUNTING DATA: BTM

ATTORNEY SIGNATURE (AUTHORIZING DEPOSIT ACCOUNT)

DATE: 5/10/2007 **SIGNATURE:**/RichardNeifeld#35,299/

Printed: May 10, 2007 (12:09pm)

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37 CFR 1.137 PETITION TO REVIVE DUE TO UNINTENTIONAL ABANDONMENT

I. Relief Requested

That applicant requests that this application be revived due to an unintentional abandonment.

II. Statement of Material Facts

On April 18, 2007, my office received a notice of abandonment in this application which the PTO mailed April 16, 2007.

I promptly reviewed the matter and this is my conclusion regarding what appears to have happened.

Our records show that our office received a notice of allowance and fees due December 27, 2006 for this application. The notice of allowability indicates that corrected drawings were required.

Our office docketed for one attorney to review the notice of allowance on January 3, 2007 and docketed for another attorney to pay the issue fee unless instructed otherwise on January 22, 2007. The attorney reviewing the notice of allowance did not note the requirement to correct the drawings and the other attorney prepared the filing to pay the issue fee.

37 CF 1.137 reads in pertinent part:

§ 1.137 Revival of abandoned application, terminated reexamination proceeding, or lapsed patent.

(b) Unintentional. If the delay in reply by applicant or patent owner was unintentional, a petition may be filed pursuant to this paragraph **to revive an**

abandoned application, a reexamination proceeding terminated under §§ 1.550(d) or 1.957(b) or (c), or a lapsed patent. A grantable petition pursuant to this paragraph must be accompanied by:

- (1) **The reply required to the outstanding Office action or notice**, unless previously filed;
- (2) **The petition fee as set forth in § 1.17(m);**
- (3) **A statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unintentional.** The Director may require additional information where there is a question whether the delay was unintentional; and
- (4) Any **terminal disclaimer (and fee as set forth in § 1.20(d)) required pursuant to paragraph (d) of this section.**

(c) Reply. In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In a nonprovisional utility or plant application filed on or after June 8, 1995, and abandoned for failure to prosecute, the required reply may also be met by the filing of a request for continued examination in compliance with § 1.114. In an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must include payment of the issue fee or any outstanding balance. In an application, abandoned for failure to pay the publication fee, the required reply must include payment of the publication fee.

(d) Terminal disclaimer.

(1) Any petition to revive pursuant to this section in a **design application** must be accompanied by a terminal disclaimer and fee as set forth in § 1.321 dedicating to the public a terminal part of the term of any patent granted thereon equivalent to the period of abandonment of the application. Any petition to revive pursuant to this section in either a **utility or plant application filed before June 8, 1995**, must be accompanied by a terminal disclaimer and fee as set forth in § 1.321 dedicating to the public a terminal part of the term of any patent granted thereon equivalent to the lesser of:

- (i) The period of abandonment of the application; or
- (ii) The period extending beyond twenty years from the date on which the

application for the patent was filed in the United States or, if the application contains a specific reference to an earlier filed application(s) under 35 U.S.C. 120, 121, or 365(c) from the date on which the earliest such application was filed.

(2) Any terminal disclaimer pursuant to paragraph (d)(1) of this section must also apply to any patent granted on a continuing utility or plant application filed before June 8, 1995, or a continuing design application, that contains a specific reference under 35 U.S.C. 120, 121, or 365(c) to the application for which revival is sought.

(3) The provisions of paragraph (d)(1) of this section do not apply to applications for which revival is sought solely for purposes of copendency with a utility or plant application filed on or after June 8, 1995, to lapsed patents, to reissue applications, or to reexamination proceedings.

(e) Request for reconsideration. Any request for reconsideration or review of a decision refusing to revive an abandoned application, a terminated reexamination proceeding, or lapsed patent upon petition filed pursuant to this section, to be considered timely, must be filed within two months of the decision refusing to revive or within such time as set in the decision. Unless a decision indicates otherwise, this time period may be extended under:

(1) The provisions of § 1.136 for an abandoned application or lapsed patent;

(2) The provisions of § 1.550(c) for a terminated ex parte reexamination proceeding filed under § 1.510; or

(3) The provisions of § 1.956 for a terminated inter partes reexamination proceeding filed under § 1.913.

III. Statement of the Reasons Why the Relief Requested Should be Granted

A. Requirements to grant the petition

The entire delay in filing the required reply from the due date for the reply until the filing of this grantable petition was unintentional.

This petition is accompanied by a reply to the outstanding Office action or notice.

This petition is accompanied by the fee set forth in § 1.17(m) (\$1500 dollars for

large entities and \$750 for small entities according to the USPTO web site list of fees posted at

<http://www.uspto.gov/web/offices/ac/qs/ope/fee2007february01.htm#patapp>).

This application was filed before 12/8/1995, and it is a utility application. Therefore, a terminal disclaimer is required to grant this petition. That terminal disclaimer is submitted herewith.

The foregoing shows the regulatory requirements for granting a petition to revive are satisfied.

B. Diligence upon Discovery and Lack of Intent to Abandon

This response was drafted promptly after receiving the notice of abandonment. At no point did the applicant express an intent to abandon this application. Accordingly, this petition to revive should be granted.

5/10/2007

Date

Respectfully submitted,

/RichardNeifeld#35,299/

Richard A. Neifeld

Registration No: 35,299

Attorney of record

BTM/ran

May 10, 2007 (12:09pm)

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